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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,429	02/17/2004	Lawrence Germano Ponsi	920229-902699	1562
23644 7590 07/31/2007 BARNES & THORNBURG LLP P.O. BOX 2786 CHICAGO, IL 60690-2786				
			EXAMINER SHAPIRO, JEFFERY A	
			ART UNIT 3653	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,429

Applicant(s)

PONSI ET AL.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/3/07 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1, 2-6, 9, 11-15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing (US 2002/0183882) in view of Bastian, II et al (US 6,650,225 B2).

As recited in Claim 1, Dearing discloses a cabinet (230) having at least one compartments (see figure 6 and paragraph 45, first five lines), a sensor for each product compartment (262-267), as shown in figures 6 and 10 and a processor (256) connected to each sensor.

Dearing further discloses an aging indicator, at paragraph 57, which indicates that an expiration message is sent to the micro-warehouse (MW 36) system (25), which is a controller/server. See paragraph 40. Each micro-warehouse is represented as a "client" on server (27), said server handling multiple clients/MW's. See paragraph 44, last 5 lines and paragraph 45, first 5 lines. Since each MW is construed as a single compartment, and each MW is disclosed as having a separate aging indicator, Dearing is therefore considered to meet Applicant's limitation of a "separate aging indicator associated with each product compartment". Multiple signals are transmitted concerning the condition of the items located in the MW, which can be a freezer, refrigerator, or other storage device. Each of the processors can monitor the status of each item concerning data such as temperature.

Note that it would have been obvious to include a temperature controller in Dearing's apparatus since Dearing discloses monitoring temperature in paragraph 40, lines 5 and 6.

Regarding the phrase "while the product remains in said product compartment", added to the independent claims, such as Claim 1, note that Dearing's device monitors and senses the presence of the product while it is in Dearing's compartment.

Dearing does not expressly disclose, but Bastian discloses a display (101), illustrated at figure 7, located at each product compartment/bay.

Regarding Claims 1, 4, 11 and 19, Dearing does not expressly disclose, but Bastian discloses using one or several indicators to depict one or several states or conditions of an item. See Bastian, col. 12, lines 3-10, which mentions that indicator light (80) can have multiple LEDs of the same or different colors.

At the time of the invention, it would have been obvious to use one LED with multiple colors or three or more LEDs of different colors in order to convey appropriate information about the aging of the items inside Dearing's compartments, as taught by Bastian. For example, one ordinarily skilled would have found it logical to use a green, yellow and red indication, wherein green is considered ok or before expiration, yellow is considered caution or getting close to expiration and red is considered expired or over-aged.

Regarding Claim 14, note that Bastian teaches using various visual indicators, for example, in figures 2e and 7. See also col. 5, line 42-col. 6, line 54 of Bastian. Col. 6, lines 41-54 discuss a configuration in which two displays which display different information, which can be construed as indicators, is displayed. Additionally, figure 2e

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illustrates indicator light (33) which is a third indicator/display of information. Note that figures 2f and 2g and col. 6, line 61-col. 7, line 9 illustrate and discuss display panel (35f) which can incorporate information from any light indicators, thereby supplanting them.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display/indicator at each compartment/bay of Dearing's microwarehouse, and to have used a combination of three light indicators/displays or a functional equivalent thereof.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract as well as col. 5, line 42-col. 6, line 54, col. 6, lines 41-54, figures 2f and 2g and col. 6, line 61-col. 7, line.

Regarding Claims 14 and 15, note that it is considered to be expedient for one ordinarily skilled in the art to have three separate displays/indicators to display separate information such as "not ready", "ready" and "select first" indicators. Bastian provides teaching, as cited above, concerning the use of several indicators and displays to communicate several pieces of information about the bay they are associated with.

Regarding Claims 2, 3, 12 and 13, Dearing describes the product storing and dispensing system described above. Dearing does not expressly disclose that the processors are optical or infrared based. However, Dearing does teach the use of various sensors, such as proximity sensor (40) or light curtains. Official notice is taken

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that optical and infrared detectors are considered to be functional equivalents of each other that one ordinarily skilled in the art would have found obvious to use to sense the presence of a product in a compartment, depending upon the requirements of the application. For example, infrared sensors are used where lighting conditions are low or where it is desired to also detect heat, whereas optical sensors might be used where heat is low or non-existent. Also, Dearing at paragraph 5, lines 7-10 describes use of RF tags having a frequency between the audible and infrared range. Therefore, it would have been obvious to use sensors based on any particular radiation-optical, radio, or infrared as functional equivalents of each other.

5. Claims 7-9, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Bastian, and further in view of Chen (US 6,930,296 B2). Dearing discloses the system described above. Dearing does not expressly disclose, but Chen discloses heating means (30) for heating items.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display at each compartment/bay of Dearing's microwarehouse.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract, for example.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Bastian and further in view of Black, Sr. et al (US 5,522,310). Dearing

discloses the system described above. Dearing does not expressly disclose, but Black discloses a thermocouple (20) for determining temperature in a freezer. Said thermocouple is also taught as being used to gather data to determine product spoilage. See col. 5, lines 46-65 and col. 12, lines 60-64.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used a thermocouple to detect temperature in a product bay of Dearing's product storage area, since Dearing discusses use of a temperature sensor at paragraph 40, line 6, and a thermocouple is just such a temperature sensor.

Response to Arguments

7. Applicant's arguments filed 5/3/07 have been fully considered but they are not persuasive. Bastian is considered to teach indicating at least three product conditions since one ordinarily skilled in the art would have considered it obvious to use as many indicators and different colors in order to appropriately indicate information as required by the operator of Dearing's system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeffrey A. Shapiro
Examiner
Art Unit 3653

July 23, 2007